

REMARKS/ARGUMENTS

I. 35 USC 103

All pending claims were rejected as being obvious over Richardson (GB 2344269) in view of Shaw (US 3282000), Burnside (US 2777171) or Peles (US 2938243).

At the outset it should be noted that the applicant does agree with the Office, that in the currently pending claims, the limitation that the prongs "[extend] laterally from opposite sides of the rail" reads on Richardson's prongs extending from the projections. Richardson's "projections" should be considered as part of his base 17.

The applicant does not, however, agree with the examiner's assertion that it was obvious to produce the currently claimed deterrent as a single, continuous, molded piece as of the relevant date. To that end the applicant submits the 6 November 2006 declaration of Joseph Wisbacher. In para. 4 Mr. Wisbacher clearly states that as of the priority date of the current application, one of ordinary skill in the art would have thought that the claimed apparatus would need to be molded in two pieces and then glued together.

In addition, there is another factor that has not yet been addressed in this prosecution, namely, what does Richardson mean by the statement that the prongs could extend from the base element "at at least four different angles" (page 2, lines 4-5). Without the poisoning of hindsight it is apparent that Richardson meant that the sets of angulations of the prongs differ from pair to pair. At Richardson page 4 lines 6-25, Richardson goes on at length to explain that the two prongs of section 16 are angled from the base at 82° and 120°, respectively, and the two prongs of section 17 are angled from the base at 60° and 80°, respectively. The clear inference is that other sets of angles were also contemplated, such as for example a third pair extending from the

base at 45° and 55°, and perhaps a fourth pair at 25° and 35°. But nowhere is there any indication that Richardson ever contemplated prongs extending from the base other than in the pairs he describes. He never even came close to teaching, suggesting the inclusion of intermediate prongs between the alternating pairs.

There isn't even any motivation for doing so. Shaw teaches five-rayed bird deterrents (see figure 1), and the implication is that more prongs at more angles would be a better deterrent. But given that the art was aware of molded devices that can extend different pairs of prongs at different sets of angles (ala Richardson), why would one of ordinary skill in the art choose to produce a mold for a deterrent with alternating side prongs and intermediate prongs? It just doesn't make sense. It was thought to be impossible to achieve (see Wisbacher declaration), and there wasn't any need to do so.

Burnside and Peles add nothing to the argument. All of the prongs in both patents are in pairs. There is no teaching, suggestion, or motivation of intermediate prongs, and of course no reason to add specific selected teachings from these applications into the teaching of Richardson.

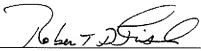
The rejections as to the dependent claims are all moot. Those claims are all allowable as being dependent upon allowable independent claims.

///

Request For Allowance

Claims 10-18, and 20-35 are pending in this application. The applicant requests allowance of all pending claims.

Respectfully submitted,
RUTAN & TUCKER

By 
Robert D. Fish
Reg. No. 33880

Rutan & Tucker
611 Anton Blvd., 14th Floor
Costa Mesa, CA 92626-1931
Telephone (714) 641-5100
Fax (714) 546-9035